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10/538,236

06/09/2005

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EXAMINER

WINAKUR, ERIC FRANK

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

07/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/538,236 | <b>Applicant(s)</b><br>ISHIZUKA ET AL. |  |
|                              | <b>Examiner</b><br>Eric F. Winakur   | <b>Art Unit</b><br>3768                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10 and 13-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 13-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/26/09</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 2 and 10 are objected to because of the following informalities: In claim 2, line 2, "a bend" should read "the bent". Claim 10 improperly depends from a cancelled claim. For purposes of examination, it will be treated as depending from claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 18 - 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 18, the relationship of the probe, holder portion, and optical fibers of lines 2 - 9 is not clearly set forth. Further, it appears that Applicant may have intended the reference to "the measuring probe" (lines 7 - 8) to have been amended to refer to "the holder portion" as in line 8. With regard to claim 19, it appears that the term "said" should be inserted before "holder" (line 2); it is unclear how the recitation of line 5 of claim 19 is to relate to the requirement of claim 18, lines 7 - 8. With regard to claim 20, it appears that the phrase "is put" should read "is adapted to be put" to avoid appearing to require the subject to define the claim element.

### ***Claim Rejections - 35 USC § 102***

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 3 - 8, 10, 13 - 19, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Hirabayashi et al. Hirabayashi et al. (Figure 22; column 7, line 37 - column 8, line 7) teach an arrangement for obtaining optical measurements from a subject's head that includes a helmet, fixing sockets (holder portions), optical fibers, springs 22-1 and 22-2 or cushioning or elastic material is placed within the fixing sockets that serve to have a portion of the optical fiber protrude from the helmet and also serve to protect the portion of the optical fiber within the helmet. The optical fibers travel within the helmet and have a bent portion within the fixing sockets; the optical fibers can travel through a path if the helmet is filled with a cushioning material. Additionally, shells 3 formed of an elastic material are also in the helmet, between the fixing sockets.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirabayashi et al. as applied to claims 1 and 18 above. Hirabayashi et al. do not particularly mention whether a portion of the coating of the optical fiber is removed. However, one of ordinary skill in the art would recognize that removing the outer coating of an optical fiber would assist in allowing the section of the fiber to more readily bend. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement Hirabayashi et al. with a bent portion of fiber having the coating removed to ensure good bending at the desired portion. Further, it is well known to retain a helmet/head covering in a variety of manners, including to use a fixing member over the helmet and surrounding the subject, and has generally been held to be within the skill level of the art to use known arrangements for their intended purposes.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1 - 20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571/272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/  
Primary Examiner, Art Unit 3768